

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.04.04 - EARLY INTERVENTION SERVICES FOR INFANTS AND TODDLERS

DOCKET NO. 16-0404-0901 (NEW CHAPTER - FEE RULE)

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 16-107(g) and 56-1007, Idaho Code, and the Individuals with Disabilities Education Act (IDEA), Part C, and CFR 34, Section 303.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be held as follows:

TUESDAY - SEPTEMBER 15, 2009	
6:30 p.m. PDT Dept. of Health & Welfare-Reg. 2 State Office Bldg. Conf. Rm. 1118 "F" Street Lewiston, ID	6:00 p.m. MDT Dept. of Health & Welfare-Reg.6 Portneuf District Library Meeting Rm. 5210 Stuart Ave. Chubbuck, ID
WEDNESDAY - SEPTEMBER 16, 2009	
6:30 p.m. MDT Dept. of Health & Welfare-Reg.5 601 Pole Line Road DHW Conf. Rm. Twin Falls, ID	6:30 p.m. MDT Dept. of Health & Welfare-Reg. 3 3402 Franklin Road DHW Conf. Rm. Caldwell, ID

The hearing sites will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The 2009 Legislature requested that the Department's Infant Toddler Program establish a process to charge fees to families receiving early intervention services for eligible infants and toddlers. This new chapter of rules provides for family cost participation in this program, with a system of sliding fees for services not covered by private insurance. The sliding fee system will be based on family income and ability to pay. It also provides policies and procedures to administer this system for fees, sets income thresholds for assessing payment obligations, and procedures for the verification of income.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased:

A sliding fee schedule is being implemented in this new rule chapter to establish a process to charge fees to families receiving early intervention services for eligible infants and toddlers. The sliding fee schedule is based on ability to pay for families with incomes above 200 percent of Federal Poverty Guidelines.

FISCAL IMPACT: The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

The anticipated fiscal impact is hard to determine at this time because the Department has no income data on families that use these services. The Department estimates approximately \$15,000 to \$20,000 for the state fiscal year 2010 for system enhancements for billing or processing of receipts. The Department also estimates that receipts received will offset cost of clerical support needed for processing for the state fiscal year 2011.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The “Notice of Intent to Promulgate Rules - Negotiated Rulemaking” was published in the June 3, 2009, Idaho Administrative Bulletin, page 47. Input was received during the negotiated meetings from families, service providers, and other stakeholders regarding the development of a cost-sharing system for families receiving early intervention services.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Mary Jones at (208) 334-5523.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 2, 2009.

DATED this 31st day of July, 2009.

Tamara Prisock
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P.O. Box 83720
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THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 16-0404-0901

IDAPA 16
TITLE 04
CHAPTER 04

EARLY INTERVENTION SERVICES FOR INFANTS AND TODDLERS

000. LEGAL AUTHORITY.

The Department of Health and Welfare has the authority to establish and enforce rules for early intervention services under Section 16-107, Idaho Code. Under Section 56-1007, Idaho Code, the Department is authorized to collect fees for services. ()

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 16.04.04, “Early Intervention Services for Infants and Toddlers.” ()

02. Scope. The Idaho Early Intervention System is a statewide, comprehensive, coordinated, multidisciplinary, interagency system of early intervention services for all infants and toddlers with disabilities and their families. The Early Intervention System is responsible to ensure early intervention services are provided to

eligible infants and toddlers from birth to thirty six (36) months with developmental delays or disabilities and their families. Services are delivered through the provisions of an Individualized Family Services Plan in accordance with the statutory provisions of the Individuals with Disabilities Education Act (IDEA), Part C, and CFR 34, Section 303. This chapter provides for a sliding fee scale to be charged to families according to their ability to pay for the early intervention services received. Included in this chapter are definitions and policies related to informing families, determining and calculating family fee obligations. ()

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements that pertain to the interpretation of the rules of this chapter, or to the documentation of compliance with the rules of this chapter. These documents are available for public inspection and copying at cost at the Department of Health and Welfare, 450 West State Street, P.O. Box 83720, Boise, Idaho, 83720-0036 or at any of the Department's Regional Offices. ()

003. ADMINISTRATIVE APPEALS.

Appeals and proceedings for any Department actions are governed by IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." An appeal does not stay the action of the Department. ()

004. INCORPORATION BY REFERENCE.

No documents are incorporated by reference into these rules. ()

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- INTERNET WEBSITE.

01. Office Hours. Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the State of Idaho. ()

02. Mailing Address. The mailing address for the business office is Idaho Department of Health and Welfare, P.O. Box 83720, Boise, Idaho 83720-0036. ()

03. Street Address. The business office of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho 83702. ()

04. Telephone. (208) 334-5500. ()

05. Internet Website Address. The Internet address is: <http://www.healthandwelfare.idaho.gov>. ()

006. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS REQUESTS.

01. Confidential Records. Any information about an individual covered by these rules and contained in Department records must comply with IDAPA 16.05.01, "Use and Disclosure of Department Records," and federal Public Law 103-209 and 92-544. ()

02. Public Records. The Department of Health and Welfare will comply with Sections 9-337 through 9-350, Idaho Code, when requests for the examination and copying of public records are made. Unless otherwise exempt, as set forth in Section 9-340, Idaho Code, and other state and federal laws and regulations, all public records in the custody of the Department of Health and Welfare are subject to disclosure. ()

007. -- 009. (RESERVED).

010. DEFINITIONS AND ABBREVIATIONS.

For purposes of this chapter of rules, the following terms and abbreviations are used as defined. ()

01. Countable Income. The annual income of all members of the identified family household. ()

02. Department. The Idaho Department of Health and Welfare is the lead agency for administration of the provisions of this chapter and under Title 16, Chapter 1, Idaho Code. ()

03. Early Intervention Services. Services for eligible infants and toddlers that meet the standards of the state including the requirements of IDEA Part C and are: ()

a. Designed to meet the developmental needs of each child eligible and the needs of the family related to enhancing the child's development in any one (1) or more of the following areas: ()

i. Physical development; ()

ii. Cognitive development; ()

iii. Communication development; ()

iv. Social or emotional development; or ()

v. Adaptive development; ()

b. Selected in collaboration with the parents; ()

c. Provided under public supervision by qualified personnel in conformity with an IFSP and at no cost, unless subject to sliding fee schedule; and ()

d. Provided in natural environments in which infants and toddlers without disabilities would participate, including home and community settings, to the maximum extent appropriate to the needs of the child. ()

04. Eligible Infants and Toddlers. Children birth to three (3) years of age that meet the Idaho Infant Toddler Program eligibility criteria of having a developmental delay, established condition, or are eligible through informed clinical opinion as determined by a multi-disciplinary team. ()

05. Family. A family is an adult, or married adults, or adult(s) with children, living in a common residence. ()

06. Family Education Rights and Privacy Act (FERPA). 20 U.S.C. Section 1232g; 34 CFR Part 99 is a Federal law that protects the privacy of student education records. The law applies to all schools including early intervention programs that receive funds under an applicable program of the U.S. Department of Education. ()

07. Family Fee. Amount the family is responsible to pay for early intervention services based on a percentage of the current Federal Poverty Guideline (FPG) level on a sliding fee scale. ()

08. Family Household. Persons in a family related by blood, marriage, or adoption. Step parents, step children, adult siblings, and individuals receiving Supplemental Security Income (SSI) or Supplemental Security Disability Income (SSDI), are excluded from consideration as a member of the household for income and counting purposes. Income from minor siblings is excluded from household income. ()

09. Federal Poverty Guidelines (FPG). Guidelines issued annually by the U.S. Department of Health and Human Services. The federal poverty guidelines are available on the U.S. Health and Human Services website at <http://aspe.hhs.gov/poverty/index.shtml>. ()

10. Full Charge for Service. One hundred percent (100%) of the hourly rate for each billable early intervention service. ()

11. Habilitative and Rehabilitative Expenses. Those expenses or charges incurred as a result of the disability needs of a family household member. These expenses include annual costs for items such as wheelchairs, adaptive equipment, medication, treatment, or therapy. ()

12. Health Insurance Lifetime Coverage Cap. The total amount that the insurer will pay during the

policy holder's lifetime. The lifetime cap varies for each individual's health insurance policy. ()

13. Idaho Infant Toddler Program. A program administered by the Department of Health and Welfare to coordinate an early intervention system to identify and serve children birth to (3) three years of age that have a developmental delay or a disability. ()

14. IDEA Part C. The Individuals with Disabilities Education Act (IDEA), a federal law, that establishes and authorizes the provision of early intervention services for eligible infants and toddlers with developmental delays or disabilities and their families. ()

15. Individualized Family Service Plans (IFSP). A written plan for providing early intervention services to a child who is eligible for early intervention services and his family. ()

16. Informed Parental Consent. Means: ()

a. The parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language or other mode of communication; ()

b. The parent understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes that activity; and ()

c. The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time. ()

17. Parent. For the purposes of informed parental consent, "parent" means a lawful mother, lawful father, guardian, person acting as a parent of the child, including a grandparent or stepparent with whom the child lives, or surrogate parent who has been appointed in accordance with federal law, IDEA 20 U.S.C. 1477. The term does not include the state if the child is a ward of the State. ()

18. Responsible Party. Under Section 32-1002, Idaho Code, the lawful mother and lawful father of a minor child, who are financially responsible, jointly or separately, for paying for the minor child's necessities, including early intervention services provided to an eligible infant or toddler and his family. ()

19. Sliding Fee Schedule. A scale used to determine financial obligations for services based on the Federal Poverty Guidelines and the number of persons in the family household. ()

20. Taxable Income. Is the federal income that is subject to taxation according to the Internal Revenue Code, 26 USC 63, as amended. ()

21. Third-Party Payor. A person or entity other than the person receiving services, or the responsible party who is legally liable for payment for all or part of the child's or family's services. ()

22. Title XIX. Title XIX of the Social Security Act, known as Medicaid, is a medical benefits program jointly financed by federal and state government and administered by each state. This program pays for medical assistance for certain eligible individuals and families with low income and limited resources. ()

23. Title XXI. Title XXI of the Social Security Act, known as the State Children's Health Insurance Program (SCHIP). This is a program that primarily pays for medical assistance for low-income children. ()

011. -- 049. (RESERVED).

050. ACCESS TO INFANT TODDLER PROGRAM.

Early intervention services through the Idaho Infant Toddler Program can be accessed through the following seven (7) service areas. ()

01. Region I. Serving the counties of Benewah, Bonner, Boundary, Kootenai, and Shoshone. Office Address: 2195 Ironwood Court, Coeur d'Alene, ID 83814, Phone: (208) 769-1409. ()

02. Region II. Serving the counties of Clearwater, Idaho, Latah, Lewis, and Nez Perce. Office Address: 2604 16th Ave., P. O. Drawer B, Lewiston, ID 83501, Phone: (208) 799-3460. ()

03. Region III. Serving the counties of Adams, Canyon, Gem, Owyhee, Payette, and Washington. Office Address: 823 Park Center Way, Nampa, ID 83651, Phone: (208) 465-8460. ()

04. Region IV. Serving the counties of Ada, Boise, Elmore, and Valley. Office Address: 1720 Westgate Dr., Boise, ID 83704, Phone: (208) 334-0900. ()

05. Region V. Serving the counties of Blaine, Camas, Cassia, Gooding, Jerome, Lincoln, Minidoka, and Twin Falls. Office Address: 803 Harrison St., Twin Falls, ID 83301, Phone: (208) 736-2182. ()

06. Region VI. Serving the counties of Bannock, Bear Lake, Bingham, Caribou, Franklin, Oneida, and Power. Office Address: 421 Memorial Drive, Pocatello, ID 83201, Phone: (208) 234-7900. ()

07. Region VII. Serving the counties of Bonneville, Butte, Clark, Custer, Fremont, Jefferson, Lemhi, Madison, and Teton. Office Address: 150 Shoup, Ste. 19, Idaho Falls, ID 83402, Phone: (208) 528-5900. ()

051. -- 074. (RESERVED).

075. EXCLUSIONS UNDER THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT, PART C.
The Idaho Infant Toddler Program services in Subsection 075.01 through 075.04 of this rule are not subject to fees: ()

01. Child Find. Implementing the child find requirements in 34 CFR, Section 303.321. ()

02. Evaluation and Assessment. Evaluation and assessments included in 34 CFR, Section 303.322, and including the functions related to evaluation and assessment in 34CFR, Section 303.12. ()

03. Service Coordination. Service coordination, as included in 34 CFR, Section 303.22 and Section 303.344(g). ()

04. Administrative and Coordinative Activities. Activities related to: ()

a. The development, review, and evaluation of Individualized Family Service Plans in 34 CFR, Sections 303.340 through 303.346; and ()

b. Implementation of the procedural safeguards and the other components of the statewide system of early intervention services. ()

076. -- 099. (RESERVED).

100. EARLY INTERVENTION SERVICES.

Early Intervention Services include services in Subsections 100.01 through 100.18 of this rule when provided to eligible infants and toddlers and their families through an Individualized Family Service Plan. ()

01. Assistive Technology Devices and Services. ()

02. Audiology. ()

03. Family Training, Counseling, and Home Visits. ()

04. Early Identification, Screening, and Assessment Services. ()

05. Health Services. Health services necessary to enable the infant or toddler to benefit from the other early intervention services. ()

- 06. Medical and Dental Services.** Medical and dental services for diagnostic or evaluation purposes. ()
- 07. Nursing Services.** ()
- 08. Nutrition Services.** ()
- 09. Occupational Therapy.** ()
- 10. Physical Therapy.** ()
- 11. Psychological Services.** ()
- 12. Respite Care.** ()
- 13. Service Coordination.** ()
- 14. Social Work Services.** ()
- 15. Special Instruction and Developmental Therapy.** ()
- 16. Speech and Language Pathology.** ()
- 17. Transportation.** Transportation and related costs that are necessary to enable an infant or toddler and the infant's or toddler's family to receive another service described in Section 100 of this rule. ()
- 18. Vision Services.** ()
- 101. -- 149. (RESERVED).**

150. EARLY INTERVENTION SERVICES SUBJECT TO FAMILY FEES.

The early intervention services identified in Subsection 150.01 through 150.07 of this rule are subject to family fees. ()

- 01. Assistive Technology Devices and Services.** ()
- 02. Audiology.** ()
- 03. Occupational Therapy.** ()
- 04. Physical Therapy.** ()
- 05. Psychological Services.** ()
- 06. Special Instruction or Developmental Therapy.** ()
- 07. Speech Language Pathology.** ()
- 151. -- 159. (RESERVED).**

160. PARTICIPANTS EXEMPT FROM FAMILY FEES.

The participants identified in Subsection 160.01 through 160.04 of this rule are exempt from being charged family fees. ()

- 01. Home Care for Certain Disabled Children.** A participant determined eligible for Home Care for Certain Disabled Children, also known as "Katie Beckett." ()

02. Medicaid Eligible. A participant determined income eligible for Medicaid under Title XIX or CHIP under Title XXI. ()

03. Foster Care or State Custody. A participant living in foster care or under state custody. ()

04. Family Income At or Below Two Hundred Percent FPG. A participant whose family household's annual taxable income is at or below two hundred percent (200%) of Federal Poverty Guidelines (FPG). ()

161. -- 199. (RESERVED).

200. CALCULATION OF FAMILY HOUSEHOLD INCOME AND FAMILY FEE AMOUNT.

01. Determination of Ability to Pay. Financial obligations are based upon the number of persons in the family household and the taxable income of those persons. The Department will determine the number of persons in the family based on the number of persons claimed on federal tax or income records of the identified members of the family household. The inability of a lawful mother or lawful father of an eligible child to pay for services will not result in the denial of services to the child or the child's family. ()

a. Determination of ability to pay will be made following finding of initial eligibility, re-determined annually or upon request of the family, or at any time change is reported in the family household, income, or allowable deductions. ()

b. Families have a financial obligation to pay any amount up to their assigned fee level which is not paid by third-party payors, including private insurance. In no case will the amount owed exceed the cost of the service. ()

02. Taxable Income Verification. The family household will be requested to provide verification of taxable income. Information sources that may be used to verify the family household taxable income may include one (1) of the following: ()

a. Documented eligibility for a program with a financial cap at or below two hundred percent (200%) of Federal Poverty Guidelines (FPG), such as Women, Infants and Children (WIC), Food Stamps, Idaho Child Care Program (ICCP), and Medicaid; ()

b. Copies of the most recent federal income tax returns; ()

03. Alternative Income Verification. In the event that the family cannot verify taxable income according to the documentation listed in Subsection 200.02 of this rule, the Department will calculate the taxable income of the family household using alternative income verification sources including one (1) of the following: ()

a. Paycheck stubs; ()

b. Financial statements, or ()

c. Family declaration of taxable income. ()

04. Submission of Requested Information. Information regarding family taxable income, third party payors and other resources, including Medicaid or private insurance, must be reviewed in order to fully determine the family's ability to pay. The responsible party must provide information not available at the time of the initial financial interview whenever that information becomes available. ()

05. Refusal Or Failure To Provide Income Information for Fee Assessment. The family will be assessed the maximum family fee of one hundred percent (100%) of the full charge if the family refuses or fails to provide family income information. ()

201. -- 219. (RESERVED).

220. ALLOWABLE EXCLUSIONS FROM TAXABLE INCOME.

The following items in Subsections 220.01 through 220.08 of this rule, may be deducted from the family household taxable income if not already excluded or deducted on an itemized federal income tax form. ()

- 01. Health Insurance Premiums.** ()
- 02. Medical Expenses.** Medical expenses including specialized dietary supplements, vision, and dental expenses. ()
- 03. Child Care Expenses.** Child care expenses necessary for parental employment. ()
- 04. Habilitative and Rehabilitative Expenses.** ()
- 05. Non-custodial Child Support Payments.** ()
- 06. Supplemental Security Income (SSI).** ()
- 07. Supplemental Security Disability Income (SSDI).** ()
- 08. Income of Minor Children.** ()

221. -- 299. (RESERVED).

300. SLIDING FEE SCHEDULE.

The sliding fee schedule for early intervention services for infants and toddlers cost participation:

SLIDING FEE SCHEDULE TABLE 300	
Percent of Federal Poverty Level of Family Household (Based on Taxable Income)	Percentage of Full Charge or Balance After Third-Party Payment
0 - 200%	0%
201 - 300%	5%
301 - 400%	10%
401 - 500%	20%
501 - 600%	30%
601 - 700%	40%
701 - 800%	50%
801 - 900%	65%
901 - 1000%	80%
1001% and Above	100%

()

301. CAP ON AMOUNT OF FAMILY FEE.

In no case will the annual financial obligation exceed three percent (3%) of taxable income of the family household or

exceed the full charge of the service provided. ()

302. -- 319. (RESERVED).

320. VOLUNTARY CONTRIBUTIONS.

Any individual, including families not subject to fees through exemptions in these rules, may make a voluntary contribution toward the cost of service provision through the Idaho Infant Toddler Program. ()

321. -- 349. (RESERVED).

350. THIRD-PARTY PAYORS.

IDEA Part C funds can only be used for payment after third-party payors have been utilized. ()

01. Private or Public Health Insurance Payor. A family's private or public health insurance will be accessed for payment of early intervention services whenever possible, and only with informed parental consent. ()

02. Obtaining Informed Parental Consent. To obtain informed parental consent, the parent must receive and review a copy of the Infant Toddler Program's payment policy which includes notice that: ()

a. The parent may incur additional costs as a result of billing early intervention services to their private health insurance. Potential costs include insurance copayments, premiums, or deductibles. ()

b. If a family has both Medicaid and private health insurance, Idaho Medicaid will bill a family's private insurance for reimbursement. Therefore, billing early intervention services to Medicaid will result in subsequent billing of private insurance. ()

c. Early intervention services billed to their private health insurance may have financial consequences for the infant or toddler and their parents including the following: amount billed may count toward the lifetime coverage cap under their health insurance; may affect the availability of access to future health insurance; and may be the basis for increasing the health insurance premiums. ()

351. -- 399. (RESERVED).

400. DELINQUENT PAYMENTS.

If the responsible party is sixty (60) days or more past due on their payments to the Department, the responsible party is contacted to determine the reason for the delinquency. If the family household's countable income has changed significantly from the amount used for the most recent fee determination, the family is offered a revised fee assessment. If there has been no substantial change in countable income, then a payment schedule may be negotiated by the Department and the participant will be advised of the Department fee collection policies and procedures. Early intervention services will continue regardless of payment status. ()

401. -- 999. RESERVED.